



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2009 Biennium

Bill #	SB0395	Title:	Jury trial for termination of parental rights
Primary Sponsor:	O'Neil, Jerry	Status:	As Introduced

- | | | |
|--|--|--|
| <input checked="" type="checkbox"/> Significant Local Gov Impact | <input checked="" type="checkbox"/> Needs to be included in HB 2 | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

FISCAL SUMMARY

	<u>FY 2008 Difference</u>	<u>FY 2009 Difference</u>	<u>FY 2010 Difference</u>	<u>FY 2011 Difference</u>
Expenditures:				
General Fund	\$1,005,113	\$984,213	\$999,521	\$1,015,212
Federal Special Revenue	\$268,927	\$262,327	\$267,161	\$272,115
Revenue:				
General Fund	\$0	\$0	\$0	\$0
Federal Special Revenue	\$268,927	\$262,327	\$267,161	\$272,115
Net Impact-General Fund Balance	<u>(\$1,005,113)</u>	<u>(\$984,213)</u>	<u>(\$999,521)</u>	<u>(\$1,015,212)</u>

Description of Fiscal Impact:

This bill provides for a right to a jury trial in any hearing determining the involuntary termination of a parent-child relationship. This bill will increase costs due to more foster care days for children and costs associated with juries.

FISCAL ANALYSIS

Assumptions:

Department of Public Health and Human Services

1. The Department of Public Health and Human Services (DPHHS) currently handles approximately 518 Termination of Parental Rights Hearings per year.
2. DPHHS estimates that 25 percent, or 130 of those cases will result in a request for trial by jury.
3. Children will remain in the foster care program an average of 60 days longer. This will result in a total of 7,800 total additional days (130 kids x 60 days = 7,800).

4. The average cost per day to maintain a child in foster care is \$29.47 dollars per day for an estimated \$229,866 additional benefit expenditures for costs to foster care maintenance ($\$29.47 \times 7,800 = \$229,866$).
5. There will be additional costs for in person expert witness testimony, increased reproductions of evidence materials, costs for formal discovery (i.e. court reporters for depositions and copies of transcripts), and travel costs for bringing in witnesses from other states who physically appear in jury trials versus the telephonic testimony often permitted in bench trials.
 - a. DPHHS estimates depositions plus copies of depositions to be \$560 per deposition with an average of 4 depositions per case totaling \$2,240 per case. ($4 \times \$560 = \$2,240$) Deposition costs range from \$120 to \$1,000 per deposition, averaging \$560 per deposition.
 - b. Expert witness fees range from \$200 per hour to \$2,500 per day. DPHHS estimates one expert witness per trial including 8 hours of travel and testimony at \$250 an hour, for a total of \$2,000 per case. ($8 \times \$250 = \$2,000$)
 - c. DPHHS assumes 2 witnesses with travel needs per jury trial at an average of 300 miles of travel at 48.5 cents a mile. $300 \times 48.5 = \$145.5 \times 2 = \291 . Hotel costs for witnesses would be \$70 per person. $\$70 \times 2 = \140 . Meal reimbursement per person would be \$23 a day times 2 days $\times 2$ people = \$92. Total travel expenses for two witnesses = $\$291 + \$140 + \$92 = \523 per case.
 - d. DPHHS estimates additional costs will be required to produce exhibits averaging \$100 per case for exhibit production costs.
 - e. Total administrative costs related to jury trial is $\$2,240 + \$2,000 + \$523 + \$100 = \$4,863$ per case totaling \$632,190 per year. ($\$4,863 \times 130 = \$632,190$)
6. Jury trials increase the level of complexity of preparation and time spent by the social workers on cases that go to jury trial vs. a bench trial. DPHHS estimates 8 extra days of preparation and work on cases at 8 hours a day totaling 64 hours per case or 8,320 hours total. Therefore, DPHHS would need to hire an additional 4.00 FTE to deal with caseload increases. ($8,320 / 2088 = 4.0$)
7. The 4.00 FTE Social Workers will cost \$173,504 for salary and benefits per year.
8. Jury trials require specialized training. There are 200 social workers and social work supervisors who would need to be trained on jury trial protocol. The Child and Family Services Division (CFSD) assumes a provision of 5 regional training sessions requiring ½ of the 200 staff to travel. An average of \$150 in travel costs would be required for 100 employees. $\$150 \times 100 = \$15,000$. CFSD assumes that fees to pay each of the trainers would be \$2,500 per training. $\$2,500 \times 5 = \$12,500$ for a total of \$27,500 to train staff in jury trial protocol. Training expenses would only be incurred the first year of the biennium.
9. Administrative expenses total \$833,194. ($\$632,190 + 173,504 + 27,500 = \$833,194$) for FY 2008 & \$805,694 (less OTO costs) for FY 2009 with a 2.5% per year increase in FY 2010 & FY 2011.
10. The funding for the administrative and benefit funding is as follows: The splits were used through FY 2011. Below is an example of the allowed splits for FY 2008;
 - a. Benefit Expenditures :
 - i. General Fund (70%) = \$160,906 ($\$229,866 \times .70 = \$160,906$)
 - ii. Federal Fund (30%) = \$68,960 ($\$229,866 \times .30 = \$68,960$)
 - b. Administrative Expenditures:
 - i. General Fund (76%) = \$633,227 ($\$833,194 \times .76 = \$633,227$)
 - ii. Federal Fund (24%) = \$199,967 ($\$833,194 \times .24 = \$199,967$)

Department of Justice

11. While it is not possible to calculate the exact cost, jury trial for the termination of parental rights would result in a significant workload increase for legal services attorneys in child abuse and neglect cases.

Judicial Branch (Office of the Court Administrator)

12. According to the Department of Public Health and Human Services, there were 518 termination hearings in FY 2006. It is assumed that there will be at least the same number of hearings in fiscal years 2008 through 2011.
13. Department of Public Health and Human Services estimates that approximately 130 or 25% of the hearings will go to jury trial.
14. Per 3-5-901 (1)(h), MCA, the Judicial Branch would be responsible for the civil jury costs in all of these cases, including fees, mileage, and postage for impaneling the juries.
15. In civil jury cases, on average, a pool of 50 jurors is called to serve, from which 12 jurors plus one alternate are selected.
16. Jurors pooled but not selected are paid \$12 and selected jurors are paid \$25 per day.
17. Parental termination cases are assumed to last an average of three days.
18. Each jury trial would cost \$1,419 $((50-13 \text{ jurors}) \times \$12 = \$444 \text{ paid to unselected jurors}) + (13 \text{ jurors} \times \$25) \times 3 \text{ days} = \975 .
19. The total estimated cost for jury fees would be \$184,470 per year $(\$1,419 \times 130 \text{ jury trials})$.
20. The Judicial Branch will incur costs associated with juror mileage reimbursement. The projected cost of mileage reimbursement is estimated to be \$23,725 $(\$3.65 \text{ mileage reimbursement per juror} \times 50 \text{ jurors per trial} = \$182.50 \text{ in mileage per trial} \times 130 \text{ trials} = \$23,725)$. This projection is based on an average mileage reimbursement per juror of \$3.65 from 2006 Yellowstone jury mileage reimbursements of \$8,446 to 2,316 jurors $(\$8,446 / 2,316 \text{ jurors} = \$3.65 \text{ mileage paid to each juror})$.
21. For the 130 trials, the Judicial Branch will also incur the costs of impaneling the juries. The Judicial Branch reimburses County Clerks of Court for postage and related supplies associated with calling a jury. Postage costs are projected to be \$2,785 $(\$0.4284 \text{ postage and supply costs per juror} \times 50 \text{ jurors} = \$21.42 \text{ per trial} \times 130 \text{ trials} = \$2,785)$.
22. The Judicial Branch will also incur additional costs for expert witnesses and related expenses for witnesses called by the County Attorneys; however the Judicial Branch has no way to estimate these costs.
23. This legislation will significantly increase district court caseloads. The impact of this legislation will require additional judicial resources since the court dockets are already full. The Judicial Branch is unable to estimate the immediate impact on judicial workload or the fiscal impact in fiscal years 2009 through 2011.

	<u>FY 2008</u> <u>Difference</u>	<u>FY 2009</u> <u>Difference</u>	<u>FY 2010</u> <u>Difference</u>	<u>FY 2011</u> <u>Difference</u>
<u>Fiscal Impact:</u>				
Department of Public Health and Human Services (DPHHS)				
FTE	4.00	4.00	4.00	4.00
<u>Expenditures:</u>				
Personal Services	\$173,504	\$173,504	\$177,842	\$182,288
Operating Expenses	\$659,690	\$632,190	\$647,994	\$664,194
Benefits	\$229,866	\$229,866	\$229,866	\$229,866
TOTAL Expenditures	\$1,063,060	\$1,035,560	\$1,055,702	\$1,076,347
<u>Funding of Expenditures:</u>				
General Fund (01)	\$794,133	\$773,233	\$788,541	\$804,232
Federal Special Revenue (03)	\$268,927	\$262,327	\$267,161	\$272,115
TOTAL Funding of Exp.	\$1,063,060	\$1,035,560	\$1,055,702	\$1,076,347
<u>Revenues: (DPHHS)</u>				
General Fund (01)	\$0	\$0	\$0	\$0
Federal Special Revenue (03)	\$268,927	\$262,327	\$267,161	\$272,115
TOTAL Revenues	\$268,927	\$262,327	\$267,161	\$272,115
Judicial Branch (Office of the Court Administrator)				
<u>Expenditures:</u>				
Operating Expenses	\$210,980	\$210,980	\$210,980	\$210,980
<u>Funding of Expenditures:</u>				
General Fund (01)	\$210,980	\$210,980	\$210,980	\$210,980
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	(\$1,005,113)	(\$984,213)	(\$999,521)	(\$1,015,212)
Federal Special Revenue (03)	\$0	\$0	\$0	\$0

Effect on County or Other Local Revenues or Expenditures:

1. It is estimated that the time involved in conducting jury trials in 130 termination hearings would result in a need for additional county attorneys and judges.

Technical Notes:

1. Scheduling jury trials will require a jury selection process and scheduling time on court dockets will be more difficult. States that have passed similar laws such as Arizona, Oklahoma and Texas, have found that jury trials resulted in backlogs on the court dockets and that children remained in foster care longer.
2. Texas allows for jury trials for terminating parental rights and experienced a large increase in appeals of resulting decisions. DPHHS is unable determine the fiscal impact of an increase in appeals at this time.

Sponsor's Initials

Date

Budget Director's Initials

Date